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17 *ON FOLLOWING PAGE*

18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND/SAN FRANCISCO DIVISION

21 NICK CANCELLA, on behalf of himself
and all others similarly situated,

22 Plaintiffs,

23 v.

24 ECOLAB INC., a corporation,

25 Defendant.

Case No. CV 12 3001 CRB
ORDER

**STIPULATION TO MODIFY PORTIONS
OF COLLECTIVE AND REPRESENTATIVE
ACTION COMPLAINT AND TO TAKE
MOTION TO STAY OFF CALENDAR**

District Judge: Hon. Charles R. Breyer
Ctrm. 6

Complaint Filed: June 11, 2012
Trial Date: Not Set

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1 Plaintiff NICK CANCELLA ("Plaintiff") and Defendant ECOLAB INC. ("Ecolab" or
 2 "Defendant") hereby stipulate as follows, through their attorneys of record:

3 **I. BACKGROUND FACTS**

4 Plaintiff filed this Complaint on June 11, 2012. In paragraph 4 of his Complaint Plaintiff
 5 sought to "certify a Rule 23 class of all similarly situated persons who work, or have worked, as
 6 Service Specialists in California." Complaint ¶ 4 (Docket 1). Based on that allegation, on July 30,
 7 2012, Defendant moved to stay the portion of this matter that sought relief for a putative Rule 23
 8 class of California Service Specialists for alleged violations of the California Labor Code. (Docket
 9 13). The basis for the motion was that this proposed class of Service Specialists was already
 10 certified in a matter pending in the Central District of California (the "*Ladore* Action").

11 Since receiving that motion to stay, Plaintiff's counsel has indicated that the allegation in
 12 paragraph 4 with respect to "California Service Specialists" was in error. Plaintiff's counsel has
 13 explained that the Rule 23 class is limited only to "California Service Specialist Trainees" as defined
 14 in paragraph 30 of the Complaint.

15 **II. STIPULATION**

16 In light of the above facts the parties agree to and do hereby stipulate as follows:

17 A. By August 20, 2012, Plaintiff will file a First Amended Complaint making only the
 18 following changes:

19 1. The second sentence of Paragraph 2 will be modified to read as follows:
 20 "Plaintiff specifically alleges that Defendant unlawfully classified all persons
 21 who are employed, or have been employed during the relevant time period, in
 22 the Service Specialist and Service Specialist Trainee positions ('Covered
 23 Employees') as exempt from the FLSA and unlawfully classified the Service
 24 Specialist Trainee position as exempt under California law requiring premium
 25 and/or double-time pay for all overtime hours worked."

26 2. The word "Trainees" shall be inserted in paragraph 4 of the Complaint after
 27 "Service Specialist" and before "in California".

28 B. Once made the changes to the Complaint outlined above completely removes from
 29 this action the wage and hour claims of California Service Specialists under the California Labor
 30 Code that are at issue in the *Ladore* Action.

C. Based upon this Stipulation and the soon to be filed First Amended Complaint, Ecolab's motion to stay is moot and can be taken off calendar. Ecolab's contemporaneous Motion to Transfer Venue remains at issue and on the calendar.

IT IS SO STIPULATED.

Dated: August 10, 2012

/s/ Jody A. Landry

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ECOLAB INC.

Dated: August 10, 2012

/s/ John T. Mullan (with permission)

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NICK CANCELLA

Dated: August 10, 2012

/s/ James M. Finberg (with permission)

JAMES M. FINBERG
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NICK CANCELLA

August 20, 2012

